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March 11, 2002



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Mr. Gary E. Walsh
Executive Director
Public Service Commission of South Carolina
Synergy Business Park, Saluda Building
101 Executive Center Drive
Columbia, South Carolina 29210

Re: BellSouth Telecommunications Section 271 Application
Docket No. 2001-209-C

Dear Mr. Walsh:

Enclosed for filing in the above-reference docket please find the Petition for Rehearing or Reconsideration of the South Carolina Cable Television Association of Commission Order No. 2002-77 in the above referenced docket.. By copy of this letter we are serving the same on all interested parties. Please stamp the extra copies provided as proof of filing and return them with our courier. Should you have any questions, please contact me.

Very truly yours,

ROBINSON, McFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

/bds
enclosure

cc/enc: Ms. Nancy Horne
All parties of record

DAVID W. ROBINSON
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BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
Docket No. 2001-209-C

In Re:

Application of
BellSouth Telecommunications, Inc.
To Provide In-Region InterLATA
Services Pursuant to Section 271
of the Telecommunications Act of 1996

PETITION FOR REHEARING
OR RECONSIDERATION
OF THE SOUTH CAROLINA
CABLE TELEVISION
ASSOCIATION

Pursuant to S.C. Code Ann. §58-9-1200 and 26 S.C. Regs. 103-881 and 103-836, Petitioner the South Carolina Cable Television Association ("SCCTA") hereby seeks rehearing and reconsideration of Order No. 2002-77 dated February 14, 2002 ("Order"). In support of this petition, SCCTA would show the following:

1. In Order No. 2002-77, issued February 14, 2002, the Public Service Commission of South Carolina ("Commission") found that BellSouth Telecommunications, Inc. ("BellSouth") had met the requirements to provide long distance services pursuant to Section 271 of the Telecommunications Act of 1996 ("1996 Act") and adopted BellSouth's Self-Effectuating Enforcement Mechanism ("SEEM") which it renamed the Incentive Payment Plan ("IPP").

2. The Order approving the SEEM plan divests the Commission of the authority to enforce the plan and to make changes to that plan when BellSouth opposes the enforcement or the changes. "This Commission acknowledges that BellSouth maintains the right to modify IPP at its own discretion, subject to Commission approval, and conversely, to consent to any revisions to IPP proposed by this Commission or CLECs prior to the revisions entering into effect." Order No. 2002-

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77, page 31. Effective enforcement measures ensure that a competitive marketplace for local telephone service develops and persists after BellSouth obtains § 271 approval. The Order plainly states that the plan depends on BellSouth's "consent" for its validity and enforceability.

3. The Commission's approval of the two-tiered penalty structure for the SEEM plan violates S.C. Code Sections 58-9-1610 through 58-9-1650 and contradicts the Commission's ruling in the ITC DeltaCom Arbitration, Docket No. 1999-690. Section 58-9-1610 clearly states that any corporation failing to comply with any lawful order of the Commission may be subject to a penalty not less than \$25.00 and not more than \$500.00. Section 58-9-1650 provides that actions to recover penalties shall be brought in the name of the State in any court of competent jurisdiction. The two-tiered penalty structure of the IPP does not comply with the statutes.

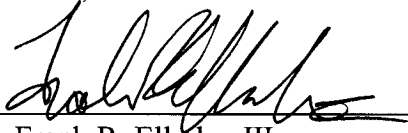
4. The Tier 1 payments could have been made enforceable as contractual liquidated damages. However, the IPP does not comply with the requirements of South Carolina law for interpretation as liquidated damages instead of penalties. The Tier 1 amounts adopted by the Order are far too low to properly compensate CLECs for damages done by BellSouth. The record is replete with testimony about the severe damages suffered by CLECs when BellSouth fails to meet its obligations to perform its interconnection duties in a timely and efficient manner. The Order notes that the "IPP is a voluntary, self-effectuating *penalty* plan similar to that used in other states where the FCC has granted Section 271 approval. The purpose of IPP is to prevent any "backsliding" by BellSouth in the level of service it offers to its competitors after it enters the long-distance market. IPP is a multi-tiered plan with escalating *penalties for continued violations* by BellSouth of a targets subset of customer-affecting SQMs." Order, page 28 (emphasis added). The question of whether a sum stipulated in a contract is an unenforceable penalty or enforceable liquidated damages depends

on the nature of the contract in light of the circumstances, and attitude and intentions of the parties. *Benya v. Gamble*, 282 S.C. 624, 321 S.E.2d 57 (S.C. Ct. App. 1984). The IPP is not designed to compensate CLECs for actual damages. The Order plainly provides that it is a penalty plan to prevent “backsliding” for violations.

5. The Commission’s Order also did not address the fact that many CLECs in South Carolina have entered interconnection agreements with BellSouth instead of adopting BellSouth’s SGAT. Although the Commission’s Order required BellSouth to include the IPP in its SGAT, it did not address incorporation of the IPP into BellSouth interconnection agreements. The CLECs with interconnection agreements are not protected from suffering competitive damages followed by debilitating efforts to prove and recover those damages in litigation.

For reasons stated herein we request the Commission reconsider its rulings in Order No. 2002-77 and issue an order consistent with the grounds stated in this petition.

ROBINSON, McFADDEN & MOORE, P.C.

By 
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Attorneys for South Carolina Cable Television
Association

Columbia, South Carolina
March 11, 2002.

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket No. 2001-209-C

In Re:)	
)	
Application of)	
BellSouth Telecommunications, Inc.)	
To Provide In-Region InterLATA)	CERTIFICATE OF SERVICE
Services Pursuant to Section 271)	
of the Telecommunications Act of 1996)	
_____)	

This is to certify that I, Barbara Standridge a legal secretary with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **Petition for Rehearing or Reconsideration on behalf of the South Carolina Cable Television Association** to BellSouth in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

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(BellSouth Telecommunications, Inc.

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